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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/512,734	02/24/2000	Christopher J. Lasher	103864.1101	5298
28089	7590	02/23/2007		EXAMINER
		WILMER CUTLER PICKERING HALE AND DORR LLP		SIPOS, JOHN
		399 PARK AVENUE	ART UNIT	PAPER NUMBER
		NEW YORK, NY 10022		3721
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE		DELIVERY MODE
3 MONTHS		02/23/2007		ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 02/23/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 09/512,734	<b>Applicant(s)</b> LASHER ET AL.
<b>Examiner</b> John Sipos	<b>Art Unit</b> 3721	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

**EXTENSIONS OF TIME AND MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 02 March 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-72 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-72 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

\* See the attached detailed Office action for a list of the certified copies not received

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. attached .  
5)  Notice of Informal Patent Application  
6)  Other: .

## ***MISCELLANEOUS***

In view of the declaration being defective the finality of the last Office action is withdrawn. The Amendment of March 2, 2006 has been entered and a correct copy of the allowed claims (submitted on November 8, 2005) has been received in the facsimile of March 28, 2006 (see Interview Summary of March 28, 2006).

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This application is objected to under 37 CFR 1.172(a) as lacking a proper written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01.

The statements made by assignee in the consent submitted November 08, 2005 do not reflect the chain of title of the original patent. The consent statement needs to reflect the consent of the current assignee. In the submitted consent, item 3 is not complete since the reel and frame numbers referring to the current assignee have been omitted.

A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

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## ***DECLARATION***

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error, which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. As stated in MPEP section 1414:

(C) It is not sufficient for an oath /declaration to merely state "this application is being filed to correct errors in the patent which may be noted from the changes made in the disclosure." Rather, the oath /declaration must specifically identify an error. In addition, it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error. See *In re Constant*, 827 F.2d 728, 729, 3 USPQ2d 1479 (Fed. Cir.), cert. denied, 484 U.S. 894 (1987). **Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. A statement of " ... failure to include a claim directed to ..." and then presenting a newly added claim, would not be considered a sufficient " error" statement since applicant has not pointed out what the other claims lacked that the newly added claim has, or vice versa. Such a statement would be no better than saying in the reissue oath or declaration that " this application is being filed to correct errors in the patent which may be noted from the change made by adding new claim 10." In both cases, the error has not been identified.**

The error statements made in the Declaration of March 2, 2006 are directed to "the omission of broader claims to \_\_\_\_", "failing to recite certain features, including \_\_\_\_", and "failing to claim the feature of \_\_\_\_". None of these are sufficient to properly specifically identify the error. These statements of failure to include claims to something or a certain limitation do not explain how the original claims are in error (inoperative or invalid). The MPEP, as quoted above, makes it clear that the statement should identify the error by reference to the specific claim(s) and the specific language wherein lies the error. In this case, no reference to any specific claim or any specific, quoted error is made. Since Applicants state that the patent is inoperative or invalid by reason of claiming less than and/or more than they had a right to claim, it is suggested that Applicants set forth as an error a limitation that was recited in too narrow/broad terms and its location in an original claim as well as the equivalent broader/narrower language used in a new claim. A single error is sufficient to comply with this error requirement.

The oath or declaration is further defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

it does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

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Claims 1-72 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration are set forth in the discussion above in this Office action.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.



**John Sipos**  
Primary Examiner  
Art Unit 3721